

87th Legislative Session – 2012

Committee: House Education

Wednesday, February 08, 2012

P - Present
E - Excused
A - Absent

Roll Call

P Elliott
P Haggar
P Hunt
P Jones
P Killer
P Lucas
P Miller
P Perry
P Schaefer
P Stricherz
P Tulson
P Vanneman
P Venner
P Sly, Vice-Chair
P Brunner, Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Representative Brunner, Chair.

MOTION: TO APPROVE THE MINUTES OF FEBRUARY 6, 2012.

Moved by: Sly
Second by: Vanneman
Action: Prevailed by voice vote.

HB 1234: provide for rewards for the best teachers and those teaching in math and science subject areas, to revise certain provisions regarding evaluation of teachers, to create a system for evaluating principals, to distinguish between tenured and nontenured teachers, to revise certain provisions regarding the employment of

teachers, and to repeal provisions regarding the teacher compensation assistance program.

Proponents: Tony Venhuizen, Office of the Governor (amendment 1234cd)
Melody Schopp, Department of Education (Handout: 1)
Representative Dan Dryden
Senator Larry Rhoden
Wade Pogany, Associated School Boards of SD
Jack Warner, Board of Regents
Rick Melmer, Self, Vermillion
Joe Graves, Mitchell School District
David Owen, SD Chamber of Commerce and Industry
Michael Held, SD Farm Bureau
Dianna Miller, Large School Group
John Pedersen, School Administrator of South Dakota
Mitch Richter, SD United Schools Assn.

Opponents: Representative Jim Bolin
Susan Turnipseed, self, Brookings (via conference call)
Pat Moller, self, Mitchell
Kira Christensen, self, Sioux Falls
Steve O'Brien, self, Watertown
Naomi Paulson, self, Redfield
Krista McCorkle, self, Timber Lake
Kate Hanson, self, Harrisburg
Tony Martinet, self, Sioux Falls
Pam Oberembt, self, Sioux Falls
Linda Mallory, self, Spearfish
Carrie Tucek, self, Wagner

The Chair recessed the meeting until after the day's legislative session.

The House Education Committee reconvened at 4:40 P.M.

HB 1234 (continued)

Opponents: Bob DeBoer, self, Huron (Handout: 2)
Sandy Arseneault, SD Education Association

MOTION: AMEND HB 1234

1234cd

On the printed bill, delete everything after the enacting clause and insert:

" Section 1. Beginning in the 2013-2014 school year, there is hereby created the math and science teacher incentive program within the Department of Education to provide funds to public school districts for the purpose of providing rewards to attract certified teachers who teach in math and science subject areas in middle school and high school or who are certified with a math or science specialist endorsement which they are utilizing for any grade, kindergarten through twelve. By January 31, 2013, the South Dakota Board of Education shall promulgate rules pursuant to chapter 1-26 establishing which courses qualify as math and science courses for purposes of the program. For purposes of this Act, math and science courses are those courses established by the Board of Education pursuant to this section. For purposes of this Act, middle school is a school consisting of any combination of two or more consecutive grades, five to eight, inclusive, and high school is a school consisting of any combination of three or more consecutive grades, including ninth grade to twelfth grade, inclusive.

Section 2. Participation in the math and science teacher incentive program is voluntary for teachers, and incentive rewards are to supplement but not replace what a teacher receives under a contract between the teacher and the school district or a collective bargaining agreement between a district and the district's teachers. No collective bargaining agreement between a district and the district's teachers may limit the ability of a teacher to qualify for or receive an incentive reward. Nothing in sections 1 to 6, inclusive, of this Act is intended to create a contractual right or property right in the math and science teacher incentive program.

Section 3. The Department of Education shall provide application forms for teachers wishing to participate in the math and science teacher incentive program. A teacher wishing to participate in the program shall complete and sign the form and provide the form to the business office of the school district by the close of business on October first of the teacher's first year of teaching, pursuant to the requirements of section 4 of this Act, to be eligible for the program. A teacher does not need to reapply each year unless the teacher switches employment to another school district. Completed applications are a public record pursuant to chapter 1-27, but personal information in the applications may be redacted as allowed by that chapter.

Section 4. To be eligible for the math and science teacher incentive program, a teacher shall fulfill the following requirements:

- (1) Comply with section 3 of this Act;

- (2) In the 2013-2014 school year or a subsequent school year, be in the teacher's first year of:
 - (a) Teaching math or science courses in middle school or high school; or
 - (b) Utilizing a math or science specialist endorsement for any grade, kindergarten through twelve;
- (3) Be in full time status for the entire school year; and
- (4) If subsection (2)(a) applies, the teacher must also be assigned to teach math or science courses, or a combination of such courses, in middle school or high school for at least fifty-one percent of a full-time equivalent position's assignments submitted in the annual teacher data collection pursuant to § 13-3-51 and any rules promulgated pursuant thereto, and be currently certified with a middle school or high school endorsement to teach each course.

No teacher shall be eligible for the math and science teacher incentive program for more than a total of five years.

Section 5. By March first of each year, the school board of each district shall submit to the Department of Education a copy of the application of each teacher eligible for the math and science teacher incentive program for the current school year pursuant to the requirements of this Act. The Department of Education may require additional information from the district as necessary to verify each teacher's eligibility for the reward. The department may refuse to issue a reward for any teacher for whom the information required by this section is not provided by the deadline.

Section 6. The amount of the reward under the math and science teacher incentive program is nine thousand four hundred twenty-five dollars per eligible teacher to be distributed as described in this section. No later than May first of each year, at the same time that foundation program state aid is distributed to school districts pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the secretary of the Department of Education shall distribute funds for the math and science teacher incentive program for teachers that qualify pursuant to this Act. These funds shall be distributed in lump sum payments.

Subject to the requirements of this Act, the department shall pay to the school district nine thousand four hundred twenty-five dollars per eligible teacher in that district. Within thirty days of receipt from the department, the school district shall distribute the funds as follows:

- (1) Eight thousand dollars shall be paid to each eligible teacher in the district; and
- (2) One thousand four hundred twenty-five dollars may be retained by the district to pay the district's share of applicable federal taxes, the district's share of contribution to the South Dakota Retirement System, and administrative costs.

Section 7. Beginning in the 2014-2015 school year, there is hereby created the top teachers reward program within the Department of Education to provide funds to public school districts for the purpose of providing top teacher rewards for certified teachers.

Section 8. Participation in the top teachers reward program is voluntary for teachers, and such rewards shall supplement but not replace what a teacher receives under a contract between the teacher and the school district or a collective bargaining agreement between a district and the district's teachers. No collective bargaining agreement between a district and the district's teachers may limit the ability of a teacher to qualify for or receive a top teacher reward. Nothing in sections 7 to 15, inclusive, of this Act is intended to create a contractual right or property right in the top teachers reward program.

Section 9. In each school year, up to twenty percent of each school district's full-time equivalent certified teaching positions, as measured by the district's annual teacher data collection pursuant to § 13-3-51 and any rules promulgated pursuant to that section, shall be eligible to receive a top teacher reward, subject to the requirements of this Act. The Department of Education shall multiply the number of full-time equivalent certified teaching positions in the district by twenty percent. If this calculation results in a fraction, the maximum number of eligible positions may not exceed the next lowest whole number. If there are fewer than five full-time equivalent certified teaching positions in a school district, the maximum number of eligible positions shall be one.

Section 10. No later than May first of each year, at the same time that foundation program state aid is distributed to a school district pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the secretary of the Department of Education shall inform each school district of the number of eligible positions in that district for the current school year, based on the calculation in section 9 of this Act, and distribute to each school district five thousand seven hundred dollars per eligible position. These funds shall be distributed in lump sum payments. The school district shall retain these funds until distribution pursuant to section 11 of this Act.

Section 11. No later than September first of each year, the school district shall distribute the funds received pursuant to section 10 of this Act as follows:

- (1) Five thousand dollars shall be paid to each teacher selected for a top teacher reward pursuant to section 14 of this Act for the previous school year; and
- (2) Seven hundred dollars may be retained by the district to pay the district's share of applicable federal taxes, the district's share of contribution to the South Dakota Retirement System, and administrative costs.

Any funds received pursuant to section 10 of this Act which are not distributed according to this section shall be returned to the Department of Education within thirty days.

Section 12. The Department of Education shall provide application forms for teachers wishing to participate in the top teachers reward program. A teacher wishing to participate in the program shall complete and sign the form and provide the form to the business office of the school district by the close of business on October first to be eligible for the program for that school year. A teacher wishing to participate shall submit a new application for each school year. Completed applications are a public record pursuant to chapter 1-27, but personal information in the applications may be redacted pursuant to that chapter.

Section 13. A participating teacher shall be full-time and receive a distinguished rating, as referenced in section 28 of this Act, on the teacher's most recent evaluation to be eligible for a top teacher reward. In addition, a distinguished teacher's selection for the reward may be based on consideration of the following factors as determined by the school board:

- (1) Mentoring of less experienced teachers;
- (2) Curriculum development;
- (3) Assessment development;
- (4) Data analysis;
- (5) Service to the local district, state, or national committees or task forces;
- (6) Leadership in a professional learning community;
- (7) National board certification;
- (8) Other leadership activities or recognitions; and
- (9) Other additional criteria as determined by the school board.

Section 14. No later than August first of each year, the school board of each school district shall determine which participating teachers, if any, are selected to receive top teacher rewards for the previous school year according to the criteria in section 13 of this Act. The number of teachers selected may not exceed the number of eligible positions referenced in sections 9 and 10 of this Act.

Section 15. The Department of Education may require each school district to provide any information necessary to verify the district's compliance with sections 10 to 14, inclusive, of this Act. Upon a finding of noncompliance, the department may require the district to return any funds distributed contrary to the requirements of this Act.

Section 16. Notwithstanding any other provisions of this Act, public school districts may opt out

of the top teacher reward program by providing written notice to the Department of Education. The notice shall be approved by a majority of the school board and signed by the school board president. The department shall provide forms for this purpose. Beginning in 2014, the notice shall be postmarked no earlier than January first, and no later than January thirty-first, of each year in order to be effective for the next school year. The district shall provide a separate form for each school year for which the district desires to opt out. If a school district fails to follow the requirements of this section, the attempt to opt out is void, and the district shall comply with the requirements of the top teacher reward program.

If a district opts out pursuant to this section, the teachers employed in the district are not eligible to participate in the top teacher reward program. The district shall provide written notice to each certified teacher of the teacher's ineligibility for the program before executing a teaching contract with the teacher for the school year for which the opt out is effective.

School districts may not opt out of the math and science teacher incentive program established pursuant to this Act.

Section 17. If a school district opts out pursuant to section 16 of this Act, all funds which the district would have been eligible to receive for the top teacher program pursuant to this Act shall be redistributed as follows:

- (1) To obtain the redistribution amount, the Department of Education shall calculate the number of positions that would have been eligible for the top teacher reward program in each opt out district pursuant to section 9 of this Act, and multiply that calculation by five thousand seven hundred dollars;
- (2) No later than May first of each year, at the same time that foundation program state aid is distributed to a school district pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the department shall allocate the redistribution amount, on a pro rata basis, to each public school district that did not opt out of the top teacher reward program or is participating in a local teacher reward program pursuant to sections 18 to 25, inclusive, of this Act. Each district's pro rata share of the redistribution amount shall be based on the number of full-time equivalent certified teacher positions in the district, as measured by the district's annual teacher data collection pursuant to § 13-3-51 and any rules promulgated pursuant to that section; and
- (3) No later than September first of each year, the redistribution amount received by each district pursuant to subdivision (2) shall be distributed equally among all teachers receiving top teacher rewards in the district pursuant to sections 7 to 15, inclusive, of this Act, or among all teachers receiving local teacher rewards pursuant to sections 18 to 25, inclusive, of this Act, but each district may withhold an amount necessary to pay the district's share of applicable federal taxes, the district's share of contributions to the South Dakota

Retirement System, and administrative costs. Any funds not distributed according to this subdivision shall be returned to the Department of Education within thirty days.

Section 18. Notwithstanding any other provision of this Act, a public school district may create a local teacher reward plan to act as a substitute for the top teacher reward program beginning in the 2014-2015 school year. If the local teacher reward plan is developed in compliance with sections 18 to 25, inclusive, of this Act, the district may utilize the local teacher reward plan to provide the district with the flexibility to use the funds that would otherwise be provided to the district through the top teachers reward program.

Participation in the local teacher reward plan is voluntary. Rewards shall supplement but not replace what a teacher receives under a contract between the teacher and the school district or a collective bargaining agreement between a district and the district's teachers. No collective bargaining agreement between a district and the district's teachers may limit the ability of a teacher to qualify for or receive a local teacher reward. Nothing in sections 18 to 25, inclusive, of this Act, is intended to create a contractual right or property right in local teacher rewards.

Teachers in the district may not participate in the top teacher reward program for any school year for which the district has adopted a local teacher reward plan. The district shall provide written notice to each certified teacher of the teacher's ineligibility for the top teacher reward program and provide a copy of the district's local teacher reward plan to each certified teacher before executing a teaching contract with the teacher for the school year for which the local teacher reward plan is effective.

Section 19. The local teacher reward plan shall reward certified teachers in the district based upon the following criteria:

- (1) Student achievement and teacher evaluations pursuant to sections 28 to 32, inclusive, of this Act; or
- (2) Market based needs of the school district based upon local priorities and unique circumstances in the school district.

Section 20. There is hereby established the Local Teacher Reward Plan Advisory Council. The council shall provide input in developing one or more model local teacher reward plan applications based upon the criteria in section 19 of this Act. The work group shall consist of the following members:

- (1) Six principals and six superintendents: two each from an elementary school, two each from a middle school, and two each from a high school;
- (2) Three teachers: one from an elementary school, one from a middle school, and one from a high school; and

- (3) Two school board members.

Section 21. The Board of Education shall promulgate rules, pursuant to chapter 1-26, establishing the application form for the local teacher reward plan, further guidelines for district applications based on the criteria in section 19 of this Act, a system to monitor whether each participating school district is complying with the local teacher reward plan, and penalties for noncompliance.

Section 22. There is hereby established the Local Teacher Reward Plan Oversight Board. The board shall consist of the following members:

- (1) One member of the Senate appointed by the president pro tempore of the Senate;
- (2) One member of the House of Representatives appointed by the speaker of the House of Representatives;
- (3) One representative of the business community appointed by the Governor;
- (4) One representative of an educational association appointed by the Governor; and
- (5) One former teacher appointed by the Governor.

Section 23. A school district shall submit the local teacher reward plan application to the Department of Education no later than January thirty-first of each year, beginning in 2014, to be eligible to apply the local teacher reward plan to the upcoming school year. The district must submit a separate local teacher reward plan application for each school year.

By March fifteenth of each year, the Local Teacher Reward Plan Oversight Board shall review all applications to determine compliance with this Act, and any rules promulgated thereto, and forward the applications to the secretary of education with the board's recommendation. The board or the secretary may request additional information from the district as part of the review of the application. By April first of each year, the secretary shall inform each district whether the district's local teacher reward plan has been approved for the upcoming school year. If the application is denied, the district may not follow a local teacher reward plan and shall comply with the requirements of the top teacher reward program for the upcoming school year.

Section 24. If a district's local teacher reward plan is approved, the Department of Education shall calculate the number of positions in the district that would have been eligible for the top teacher reward program pursuant to section 9 of this Act and multiply that calculation by five thousand seven hundred dollars. No later than May first of each year, at the same time that foundation program state aid is distributed to the district pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the secretary of the Department of Education shall distribute this amount to the district in a lump sum payment.

Section 25. No later than September first of each year, the district shall distribute the funds received pursuant to section 24 of this Act to each certified teacher selected for a reward under the local teacher reward program for the previous school year, but the district may withhold an amount necessary to pay the district's share of applicable federal taxes, the district's share of contributions to the South Dakota Retirement System, and administrative costs. Any funds not distributed according to this section shall be returned to the Department of Education within thirty days.

Section 26. A teacher may apply for both the math and science teacher incentive program and the top teachers reward program established pursuant to this Act or both the math and science teacher incentive program and the local teacher reward plan established pursuant to this Act.

Section 27. That § 13-42-34 be amended to read as follows:

13-42-34. Any public school district seeking state accreditation shall evaluate the performance of each certified teacher in years one ~~through to~~ three, inclusive, not less than annually, and each certified teacher in the fourth contract year or beyond, not less than every other year.

~~Each~~ For the 2012-2013 school year and the 2013-2014 school year, each school district ~~shall~~ may adopt procedures for evaluating the performance of certified teachers employed by the school district that:

- (1) Are based on the minimum professional performance standards established by the Board of Education pursuant to § 13-42-33;
- (2) Require multiple measures;
- (3) Serve as the basis for programs to increase professional growth and development of certified teachers; and
- (4) Include a plan of assistance for any certified teacher, who is in the fourth or subsequent year of teaching, and whose performance does not meet the school district's performance standards.

Section 28. That § 13-42-34 be amended to read as follows:

13-42-34. Any public school district seeking state accreditation shall evaluate the performance of each certified teacher ~~in years one through three not less than annually, and each certified teacher in the fourth contract year or beyond, not less than every other year.~~ Beginning in the 2014-2015 school year, each certified teacher shall be evaluated on an annual basis.

Each school district shall adopt the model evaluation instrument required by section 30 of this Act and procedures for evaluating the performance of certified teachers employed by the school district

that:

- (1) Are based on the minimum professional performance standards established by the Board of Education pursuant to § 13-42-33;
- (2) Require multiple measures of performance as follows:
 - (a) Fifty percent of the evaluation of a teacher shall be based on quantitative measures of student growth, based on a single year or multiple years of data. This quantitative data shall be based on reports of student performance on state validated assessments established pursuant to § 13-3-55. For those teachers in grades and subjects for which there is no state-validated assessment for the quantitative portion of the evaluation, teachers shall demonstrate success in improving student achievement using objective measures, which can include portfolio assessments, end-of-course exams, or other district approved assessments which demonstrate student growth; and
 - (b) Fifty percent of the evaluation of a teacher shall be based on qualitative, observable, evidence-based characteristics of good teaching and classroom practices as further defined in the model evaluation instrument referenced in section 30 of this Act. Districts may collect additional evidence using any of the following if not required by the model evaluation instrument:
 - (i) Classroom drop-ins;
 - (ii) Parent surveys;
 - (iii) Student surveys;
 - (iv) Portfolios; or
 - (v) Peer review;
- (3) Serve as the basis for programs to increase professional growth and development of certified teachers; and
- (4) Include a plan of assistance for any certified teacher, ~~who is in the fourth or subsequent year of teaching, and~~ whose performance does not meet the school district's performance standards; and
- (5) Are based on the following four-tier rating system:

- (a) Distinguished;
- (b) Proficient;
- (c) Basic; and
- (d) Unsatisfactory.

Section 29. The provisions of section 28 of this Act are effective July 1, 2014.

Section 30. That § 13-42-35 be amended to read as follows:

13-42-35. A work group appointed by the secretary of education shall provide input in developing the standards for defining the four-tier rating system required by section 28 of this Act and shall develop in developing a model evaluation instrument that ~~may~~ shall be used by school districts for the 2014-2015 school year and subsequent school years. The work group shall consist of the following members:

- (1) Six teachers: two from an elementary school, two from a middle school, and two from a high school;
- (2) Three principals: one from an elementary school, one from a middle school, and one from a high school;
- (3) Two superintendents;
- (4) Two school board members;
- (5) Four parents who have students in various levels of the K-12 system;
- (6) One representative of the South Dakota Education Association;
- (7) One representative of the School Administrators of South Dakota; and
- (8) One representative of the Associated School Boards of South Dakota.

Section 31. That chapter 13-42 be amended by adding thereto a NEW SECTION to read as follows:

Pursuant to chapter 1-26, the South Dakota Board of Education shall promulgate rules establishing standards for defining the four-tier rating system required by section 28 of this Act and adopting the model evaluation instrument referenced in section 30 of this Act.

Section 32. That chapter 3-18 be amended by adding thereto a NEW SECTION to read as follows:

Beginning with the 2014-2015 school year, the procedures for evaluation and the model evaluation instrument referenced in sections 28 to 31, inclusive, of this Act may not be the subject of any collective bargaining agreement between a district and the district's teachers.

Section 33. The Board of Education shall promulgate rules pursuant to chapter 1-26 to establish minimum professional performance standards for certified principals in South Dakota public schools, and to establish best practices for the evaluation of the performance of certified principals that shall be used by individual school districts. The South Dakota Board of Education shall promulgate rules pursuant to chapter 1-26 establishing standards for defining the four-tier rating system required by section 34 of this Act and adopting the model evaluation instrument referenced in section 35 of this Act.

Section 34. Beginning in the 2014-2015 school year, any public school district seeking state accreditation shall evaluate the performance of each certified principal not less than every other year.

Each school district shall adopt the model evaluation instrument required by section 35 of this Act and procedures for evaluating the performance of certified principals employed by the school district that:

- (1) Are based on the minimum professional performance standards established by the Board of Education pursuant to section 33 of this Act;
- (2) Require multiple measures of performance;
- (3) Serve as the basis for programs to increase professional growth and development of certified principals;
- (4) Include a plan of assistance for any certified principal whose performance does not meet the school district's performance standards; and
- (5) Are based on the following four-tier rating system:
 - (a) Distinguished;
 - (b) Proficient;
 - (c) Basic; and
 - (d) Unsatisfactory.

Section 35. A work group appointed by the secretary of education shall provide input in developing the standards referenced in section 33 of this Act, the four-tier rating system required by section 34 of this Act, and in developing a model instrument for principal evaluation that shall be used by school districts for the 2014-2015 school year and each school year thereafter. The work group shall consist of the following members:

- (1) Six principals: two from an elementary school, two from a middle school, and two from a high school;
- (2) Three teachers: one from an elementary school, one from a middle school, and one from a high school;
- (3) Two superintendents;
- (4) Two school board members;
- (5) Four parents who have students in various levels of the K-12 system;
- (6) One representative of the South Dakota Education Association;
- (7) One representative of the School Administrators of South Dakota; and
- (8) One representative of the Associated School Boards of South Dakota.

Section 36. All persons conducting teacher or principal evaluations required by sections 28 to 35, inclusive, of this Act shall participate in training conducted by the Department of Education before conducting the evaluations.

Section 37. That chapter 13-43 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of this chapter, the term, tenured teacher, means a teacher who is in or beyond the fourth consecutive term of employment as a teacher with the school district prior to July 1, 2012. If, prior to July 1, 2012, the school district and the teacher have entered into a contract pursuant to §§ 13-43-4 and 13-43-5 for the teacher's fourth consecutive term of employment with the district or a subsequent consecutive term of employment with the district, then that teacher is a tenured teacher for purposes of this chapter. The term, nontenured teacher, means a teacher who is not yet in or beyond the fourth consecutive term of employment as a teacher with the school district prior to July 1, 2012. Any teacher who is not in or beyond the fourth consecutive term of employment with the school district prior to July 1, 2012, may not acquire continuing contract status under this chapter.

Section 38. That § 13-43-6 be amended to read as follows:

13-43-6. The contract shall specify the date at or about which the school shall begin, the term of employment, the wages per month, and the time of payment ~~thereof; such of wages.~~ The contract shall be signed in duplicate and one copy filed in the office of the business manager and the other retained by the teacher. ~~Such~~ The contract may be issued covering any period of ~~years, not to exceed three~~ employment up to one year, over which a teacher holds a certificate which ~~will~~ shall remain valid without renewal.

Section 39. That § 13-43-6.1 be amended to read as follows:

13-43-6.1. A tenured or nontenured teacher may be terminated, by the school board, at any time for just cause, including breach of contract, poor performance, incompetency, gross immorality, unprofessional conduct, insubordination, neglect of duty, or the violation of any policy or regulation of the school district. ~~A school district may nonrenew a teacher who is in or beyond the fourth consecutive term of employment as a teacher with the school district pursuant to § 13-43-6.3 for just cause, including breach of contract, poor performance, incompetency, gross immorality, unprofessional conduct, insubordination, neglect of duty, or the violation of any policy or regulation of the school district.~~

Section 40. That § 13-43-6.2 be amended to read as follows:

13-43-6.2. If nonrenewal of a tenured teacher is contemplated under ~~§ 13-43-6.1~~ § 13-43-6.3, the superintendent or chief executive officer shall give written notice of an intention to recommend nonrenewal to the teacher and the school board; a written statement of the reasons for the recommendation; access to the employment records of the teacher; the opportunity to the teacher for a hearing before the school board to present reasons in person or in writing why the nonrenewal should not occur; and the opportunity to be represented. The teacher shall request the hearing as provided in § 13-43-6.9. The school board shall conduct the hearing not sooner than fourteen days, nor later than forty-five days, after receipt of the teacher's request for hearing. The parties may waive the time limitations provided for in this section.

Section 41. That § 13-43-6.3 be amended to read as follows:

13-43-6.3. ~~Until a teacher is in or beyond the fourth consecutive term of employment as a teacher with the school district, a~~ A school board may or may not renew the teacher's contract of a nontenured teacher. The superintendent or chief executive officer shall give written notice of nonrenewal by April fifteenth but is not required to give further process or a reason for nonrenewal.

~~After a teacher is in or beyond the fourth consecutive term of employment as a teacher with the school district, §§ 13-43-6.1 and 13-43-6.2 apply to any nonrenewal of the teacher's contract. A school board may refuse to renew the teacher's contract of a tenured teacher for just cause, including breach of contract, poor performance, a rating of unsatisfactory on two consecutive evaluations pursuant to section 28 of this Act, incompetency, gross immorality, unprofessional conduct,~~

insubordination, neglect of duty, or the violation of any policy or regulation of the school district. On or before April fifteenth, the superintendent or chief executive officer shall notify the tenured teacher and the school board in writing of the recommendation to not renew the teacher's contract.

Acceptance by ~~the~~ a tenured or nontenured teacher of an offer from the district to enter into a new contract with the teacher shall be in the manner specified in the offer. Failure of the teacher to accept the offer in the manner specified constitutes the termination of the existing contract between the teacher and the district at the end of its term.

Section 42. That § 13-43-6.4 be amended to read as follows:

13-43-6.4. Notwithstanding §§ ~~13-43-6.1 to~~ §§ 13-43-6.2 and 13-43-6.3, ~~inclusive~~, if a teacher's contract is not renewed due to a reduction in staff, only written notice is required, which shall be provided by the school board to the teacher by April fifteenth.

Section 43. That § 13-43-6.6 be amended to read as follows:

13-43-6.6. Although a collective bargaining agreement between a district and its teachers may set forth specific additional grounds for termination or set forth provisions as to the procedure or notice, no agreement may limit the district's right to terminate or refuse to renew the contract of a tenured or nontenured teacher for the grounds set forth in §§ 13-43-6.1 to 13-43-6.3, inclusive. No agreement may limit the protection afforded to a teacher under § 13-43-6.5.

Section 44. For purposes of this Act, the term, school year, means the regular school term as referenced in § 13-26-2.

Section 45. That § 13-3-73 be repealed.

~~13-3-73. There is hereby created the teacher compensation assistance program within the Department of Education to provide funds to school districts for the purpose of assisting school districts with teacher compensation. School districts are eligible to receive funds from the teacher compensation assistance program based on their fall enrollment numbers. The department shall provide four-fifths of the funds for the teacher compensation assistance program to each participating school district. The Board of Education shall promulgate rules, pursuant to chapter 1-26, to create an oversight board appointed by the secretary of education for approval of applications as well as guidelines for district applications based on district instructional goals, market compensation or other specific district requirements as approved by the department. Participation in the program is discretionary. District applications shall be approved by the local board of education. The applications shall be reviewed by the teacher compensation assistance program oversight board and shall be recommended to the Board of Education for final approval.~~

~~—The Legislature shall review the teacher compensation assistance program in 2012 to determine its effectiveness and to determine whether to continue the program.~~

Section 46. That § 13-3-74 be repealed.

~~—13-3-74. The Teacher Compensation Assistance Program Oversight Board shall annually monitor the progress of participating school districts with their teacher compensation assistance plans, and submit its findings to the Board of Education.~~

Section 47. That § 13-3-74.1 be repealed.

~~—13-3-74.1. There is hereby established the Teacher Compensation Assistance Program Advisory Council. The council shall be under the supervision of the Department of Education. The speaker of the House of Representative shall appoint three members of the House of Representatives to the council, including at least one member from each political party, and the president pro tempore of the Senate shall appoint three members of the Senate to the council, including at least one member from each political party. The Governor shall appoint the remaining members of the council, including at least one teacher, one school administrator, and one representative of a statewide education organization.~~

Section 48. That § 13-3-74.2 be repealed.

~~—13-3-74.2. The council shall examine how teacher quality and teacher salaries in the state can be enhanced, and how the funds appropriated in fiscal year 2010 and in subsequent fiscal years by the state for the teacher compensation assistance program established in § 13-3-73 can best be utilized to assist in that effort. The council shall consider a variety of issues surrounding teachers including market compensation, a tiered licensure system, a system for evaluating teachers, mentoring and induction programs for teachers, and continuing contracts for teachers.~~

Section 49. That § 13-3-74.3 be repealed.

~~—13-3-74.3. The council shall complete its work and the secretary of education shall provide its recommendations to the Governor and to the Executive Board of the Legislative Research Council no later than November 15, 2008.~~

Section 50. That § 13-3-75 be repealed.

~~—13-3-75. The South Dakota Board of Education shall promulgate rules pursuant to chapter 1-26 establishing the application process; application timelines; the guidelines for district applications based on school district instructional goals or market compensation; and a system to monitor the progress of participating school districts with their compensation assistance plans and to ensure that each participating school district is complying with the plan as submitted to the board.~~

Section 51. That § 13-3-83.1 be repealed.

~~13-3-83.1. Once all the school districts with approved applications have received their funding pursuant to § 13-3-73, the Department of Education may set aside from any funds remaining, a sum not to exceed one hundred thousand dollars from the teacher compensation assistance program appropriation for the purpose of providing grants to educational cooperatives and multi-district centers that employ teachers for public schools. The South Dakota Board of Education may promulgate rules, pursuant to chapter 1-26, to establish the granting process."~~

Moved by: Sly
Second by: Vanneman
Action: Prevailed by voice vote.

MOTION: AMEND HB 1234

1234cf

On the previously adopted amendment, 1234cd, delete Section 40 and the first five lines of Section 41, and insert the following:

Section 40. That § 13-43-6.2 be amended to read as follows:

13-43-6.2. If nonrenewal of a tenured or nontenured teacher is contemplated under ~~§ 13-43-6.1~~ § 13-43-6.3, the superintendent or chief executive officer shall give written notice of an intention to recommend nonrenewal to the teacher and the school board; a written statement of the reasons for the recommendation for any tenured teacher; access to the employment records of the teacher; the opportunity to the teacher for a hearing ~~before the school board~~ to present reasons in person or in writing why the nonrenewal should not occur; and the opportunity to be represented. The teacher shall request the hearing as provided in § 13-43-6.9. The school board shall contract with the Office of Hearing Examiners pursuant to § 1-26D-11 to conduct the hearing not sooner than fourteen days, nor later than forty-five days, after receipt of the teacher's request for hearing. The parties may waive the time limitations provided for in this section. The hearing examiner, after hearing evidence in the matter, shall make proposed findings of fact and conclusions of law, and a proposed decision. The superintendent or chief executive officer, with the consent of the school board, may accept or reject the decision of the hearing examiner, and the decision of the superintendent or chief executive officer is final without further action. The school district and the teacher requesting the hearing shall each pay half of the cost of the services provided by the Office of Hearing Examiners.

Section 41. That § 13-43-6.3 be amended to read as follows:

13-43-6.3. ~~Until a teacher is in or beyond the fourth consecutive term of employment as a teacher with the school district, a~~ A school board may or may not renew the teacher's contract of a nontenured teacher. The superintendent or chief executive officer shall give written notice of nonrenewal by April

fifteenth but is not required to give ~~further process or~~ a reason for nonrenewal.

Moved by: Perry
Second by: Venner
Action: Prevailed by voice vote.

MOTION: AMEND HB 1234

1234cg

On the previously adopted amendment, 1234cd, on the fifth line of Section 41, strike "but is not", and insert "and is".

Moved by: Schaefer
Second by: Stricherz
Action: Failed by voice vote.

MOTION: DO PASS HB 1234 AS AMENDED

Moved by: Sly
Second by: Tulson
Action: Prevailed by roll call vote. (11-4-0-0)

Voting Yes: Haggar, Hunt, Miller, Perry, Schaefer, Stricherz, Tulson, Vanneman, Venner, Sly, Brunner

Voting No: Elliott, Jones, Killer, Lucas

MOTION: ADJOURN

Moved by: Lucas

Second by: Tulson

Action: Prevailed by voice vote.

Grace Curtis
Committee Secretary

Thomas J. Brunner, Chair